

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.No.34213 OF 2023

Between:

M/s. ATC Telecom Infrastructure Pvt Ltd

... **Petitioner**

And

Regional Provident Commissioner –I & another

... **Respondents**

JUDGMENT PRONOUNCED ON: 30.07.2024

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

MRS JUSTICE SUREPALLI NANDA

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P.No.34213 OF 2023****% 30.07.2024****Between:**

M/s. ATC Telecom Infrastructure Pvt Ltd

... Petitioner**And**

\$ Regional Provident Commissioner –I & another

... Respondents**< Gist:****> Head Note:**

! Counsel for the Petitioner : Sri C.V.Mohan Reddy

^ Counsel for Respondents : Sri B.Jithender Reddy,
Ld. Standing Counsel for
EPFO**? Cases Referred:**

- (i) (2021) 6 SCC 771
- (ii) (1998) 8 SCC 1
- (iii) 2021 SCC Online SC 801
- (iv) (2008) 5 SCC 756
- (v) (1990)1 SCC 68
- (vi) Judgment dated 16.03.2022 passed in W.P.No.33763 of 2010,
- (vii) (2007) 3 Bombay CR 898
- (viii) ATA No.966 (12) 2004
- (ix) (2006) 4 L.L.N. 468
- (x) Judgment dated 03.03.1998
- (xi) Judgment dated 25.01.2006
- (xii) Judgment dated 26.10.1989

HON'BLE MRS. JUSTICE SUREPALLI NANDA

WRIT PETITION No.34213 OF 2023

ORDER:

Heard Sri C.V.Mohan Reddy, learned counsel appearing on behalf of the petitioner and Sri B.Jithender Reddy, learned counsel appearing on behalf of the respondents.

2. The petitioner approached the court seeking prayer as under:

"To issue an order direction or writ particularly one in the nature of mandamus declaring the action of the Respondent Authority in passing Order dated 31.10.2023 under Sec 7-B of Employees' Provident Funds and Miscellaneous Provisions Act 1952 and the Proceedings No. 7A Order No.TS/RO/ HYD-I(BKP)/59713/Compliance I1/T-1/2021/2019 dated 16.09.2021 passed by the 1st Respondent Authority as illegal perverse arbitrary and violative of principles of natural justice and being violative of Employees Provident Funds and Miscellaneous Provisions Act 1952 and consequently set aside the same and pass"

3. The case of the Petitioner as per the averments made by the petitioner in the affidavit filed by the petitioner in support of the present Writ Petition in brief, is as follows:

a) It is the case of the Petitioner, that the Petitioner is a company registered under the Indian Companies Act, 1956 having its registered office at Mumbai and branches at various places across India, one of such Branch offices is M/s. ATC Telecom Infrastructure Pvt. Ltd, located at 6-3-1186 and 6-3-1186/A, 6-3-1186/A/B, 4th Floor, Flat No. 404 & 405, Somajiguda, Raj Bhavan Road, Begumpet, Hyderabad. The Petitioner unit at Hyderabad is covered under the EPF Act with EPF Code number AP/59713, and the petitioner had been remitting the EPF Contributions regularly without any default.

b) Subsequently, on 18.05.2016 an inspection was conducted by the then Enforcement Officer and the Petitioner was directed to produce some of the records of their establishment, accordingly, the petitioner produced the relevant records along with a letter dated 20.05.2016. Thereafter, the Respondent initiated Section 7-A proceedings and summons were issued to the petitioner to appear on 20.06.2016 as per the summons dated 01.06.2016. In continuance to the same, several hearings were held thereafter and, in the hearing, held on 18.07.2016, the petitioner submitted a list of 11(O & M) Service Contracts along with their P.F. Codes along with salary statement of inquiry period in the form of a CD. Thereafter, the petitioner submitted

all the relevant documents as and when directed by the Enforcement Officer.

c) However, the Enforcement Officer, without considering the objections of the petitioner, submitted his deposition on 25.07.2018 claiming contributions on two counts i.e. non-enrollment of the employees engaged through contractors the Rs.101.96 Cr (approx.) and on wages prescribed Section 2-(b) of the EPF Act of Rs 1.88Cr approx. and thereby claimed an amount total amount of Rs.103.84 Cr (approx.) crores on the said two counts. The enforcement officer surprisingly has mentioned that the said amount pertains to 1723 contractors but failed to provide their names, their nature of contract etc. Though the new Enforcement Officer sought time to submit the list of the 1723 contractors in the hearings held on 14.11.2018, 11.12.2018, 22.01.2019, 22.02.2019, 23.03.2019 and also on 24.04.2019 but avoided to furnish the said details on all these dates and finally the said details were never provided. Therefore, the petitioner without prejudice to its rights in absence of said details, submitted the objections to the Enforcement Officer (EO) deposition on 23.10.2019 and a detailed reply was submitted by the Petitioner.

d) It is further the case of the petitioner that, on 18.12.2019 and 02.01.2020, the petitioner received an e-mail from the EO with a list of contactors sorted out from the annexures A, B,C. & D to seek relevant documents on sample basis vide its letters dated 22.01.2020 and on 12.02.2020, the petitioner submitted all the documents including invoices and agreements as requested by the EO. In addition to the above, earlier the petitioner also submitted the General ledger 194-C statement, and all the Annexures supporting the case of petitioner. However, the Enforcement Officer submitted another report on 29.04.2021 without properly considering any of the objections raised by the petitioner in its various detailed communications and the said report of the Enforcement Officer was without considering the details of the registered contractors/having independent PF Code.

e) Subsequently, the respondent authority placing reliance on the Reports dated 29.04.2021 and 05.07.2021 of the Enforcement Officer and without considering any of the replies of petitioner, without answering the issues relating to the list of 1723 contractors and without even summoning any of the registered contractor passed a final order under Section 7-A of EPF Act on 16.09.2021. Moreover, the respondent organization

has determined the contributions in respect of the various contract workers without their identification and thereby claimed an amount of Rs.105,47,17,492/- and another amount of Rs.1,88,71,135/- was claimed on special allowance totaling to an amount 107,35,88,627/- for the period from 04/2014 to 03/2016.

f) Aggrieved by the said proceedings dated 16.09.2021, the Petitioner filed detailed objections dated 21.07.2021 and 01.08.2021, but there has been no response to the same. Instead, the Enforcement Officer filed another report dated 05.07.2021 alleging that burden lies on the Petitioner to provide the details of 1723 contractors to whom the petitioner has not allegedly remitted the PF dues to the tune of about Rs.101 crores. Further it was clear that there is an error in the calculations even though the Respondent agreed and recorded that all the contractors where the petitioner was able to provide the PF Code numbers & land/site owners, the same has been considered but while arriving on the demand the Respondent has inadvertently taken the same figures given in Enquiry Report dated 29.04.2021, which actually include all the contractors including those with independent PF code numbers and land/site owners and out of the total demand of Rs.107 Crores, nearly

Rs.100 Crore is on account of these contractors whose PF code numbers were provided by the petitioner establishment, who are independent contractors and land/site owners who were supposed to be excluded as per the finding/observation of the respondent in order dated 16.09.2021 under Section 7A of the Act.

g) Thereafter, the petitioner filed a Review Application and the same was rejected vide order dated 16.12.2021. Aggrieved by the same, the petitioner filed W.P No. 10127 of 2022 and this court vide order dated 26.04.2022 disposed of the case by setting aside the order impugned dated 16.12.2021 passed under section 7-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and accordingly remanded the matter for conducting enquiry afresh.

h) It is the further case of the petitioner that, the EO had given report dated 29.03.2023 and the Petitioner submitted its reply to the report on 14.7.2023 through e-mail and on 18.7.2023 in person and as such, the Petitioner was in anticipation of consideration of their request for providing the list, as sought for. Subsequently, the petitioner got to know from the BO that the final order

has been passed on 31.10.2023. The respondent authority has again passed the impugned order violating the principles of natural justice and without considering the submission made by the petitioners on various dates. The respondent Authority had also failed to explain the simple error of calculation basis which the review application was filed and failed to provide the list of contractors against whom this liability of PF contribution is alleged to be calculated.

i) It is submitted that the Respondent Authority by passing the Order dated 16.09.2021 and also the Order dated 31.10.2023 is forcing the Petitioner to make the payment to non-existent/unidentified employees, which is illegal, arbitrary and violative of provisions of EP Act. Therefore, aggrieved by the action of the respondent authority in passing impugned orders dated 16.09.2021 and 31.10.2023, the present Writ Petition is filed.

PERUSED THE RECORD

4. The counter affidavit filed by the 1st Respondent, in particular para Nos. 9, 12, 13 are extracted hereunder :

"9. It is respectfully submit that vide Summons no. TS/RO/HYD-1/C-1/T-1/7-A/59713/2022/40 dated

09.05.2022, an opportunity was provided to the employer to represent their case by duly fixing the date of hearing on 19.05.2022. Subsequent proceedings u/s 7B were held on 29.06.2022, 27.07.2022, 25.08.2022, 21.10.2022, 03.11.2022, 30.11.2022, 10.01.2023, 25.01.2023, 31.03.2023, 26.04.2023, 21.06.2023, 05.07.2023 and 18.07.2023.

12. It is respectfully submitted that the authority conducting the inquiry u/s 7B, i.e., RPFC-I held that no inconsistency was noticed in the written part as well as the calculation part of the 7A Order as alleged by the establishment through the Review Application. The establishment failed in bringing out any error or mistake apparent on the face of the record in the Order dated 29.09.2021 to sustain the Review Application dated 14.10.2021. The inquiry was concluded after giving sufficient and reasonable opportunities to the establishment for representing its case. Accordingly, Order No.TS/RO/HYD-I/59713/C-I/T-1/2023/497 dated 31.10.2023 was issued rejecting the Review Application of the establishment, filed under Section 7B of the Act. Now, the establishment has filed a present Writ Petition against the orders issued, as above, under Section 7A and 7B of the Act. Without availing the alternative statutory remedy, hence this Writ Petition not maintainable.

13. It is respectfully submit that the petitioner establishment has not filed any appeal against the Orders issued u/s 7A and 7B of the Act before the CGIT though

provision for appeal is available under Section 7I of the Act. Whereas, the establishment filed this Writ Petition before the Hon'ble Court when there is no locus standi for considering the issues raised in the petition under Article 226 of the Constitution, especially when there is alternative remedy of filing appeal under Section 7-I of the Act."

5. Reply affidavit filed on behalf of the Petitioner, in particular para No.6 is extracted hereunder :

"6. In reply to paragraph No.9-12 of the Counter Affidavit filed by the respondents, it is respectfully submitted that the contents therein are denied. The dates referred to at para 9 to contend that opportunity was provided is incorrect for the reasons elaborated in para 16 of our affidavit filed in support of the writ petition. It is emphasized that consequent to passing of the orders by the Hon'ble High Court, the respondent held a hearing on 30.05.2022. In the said hearing, the respondent directed the petitioner to file written submission with all the supporting documents. Accordingly, on 15.06.2022, the petitioner filed their detailed written submissions. At this juncture, the then Regional Provident Fund Commissioner got superannuated and the hearings before the said Authority could not be concluded. After the new incumbent joined, a hearing was conducted on 10.01.2023. The petitioner again submitted their arguments and for continuation, the matter was adjourned to 25.01.2023. However the petitioner did not receive any online meeting link for the hearing scheduled on 25.1.2023 and wrote an

email on same day to the Appropriate Authority that in absence of online meeting link the hearing could not be attended and to inform the petitioner about next date of hearing. On 21.06.2023, the petitioner received an email from the office of the respondent along with a reply dated 29.03.2023 of the Enforcement Officer and also the petitioner was intimated about next date of hearing to be on 05.07.2023. On 05.07.2023, the hearing was adjourned to 20.07.2023 due to no availability of Inquiry Officer. However, on the request of the Petitioner the hearing was preponed and rescheduled for 18.07.2023 and was conducted in person. The Petitioner submitted its reply to the report of EO dated 29.3.2023 on 14.7.2023 through e-mail and on 18.7.2023 in person and as such, the Petitioner was in anticipation of consideration of their request for providing the list, as sought for."

DISCUSSION AND CONCLUSION

6. On an earlier occasion Petitioner herein approached the Court by filing W.P.No.10127/2022 seeking to set aside the order passed by the 1st Respondent U/s.7-B of the Employees Provident Fund, and Miscellaneous Provisions Act, 1952 (for short 'the Act') bearing No.TS/HYD-1/R.O./C-1/T-1/59713/2021/332, dated 16.12.2021.

7. The said writ petition was disposed off vide its order dated 26.04.2022 observing at Paras 9, 10, and 11 of the said order as under :

9. As per sub-Clause (4) of Section 7-B of the Act, notice should be given to all the parties to appear and they should be heard in response to the order against which the review is applied for. As per the contention of the petitioner no notice was given to them and they were not heard by the authority, who passed the impugned order. Learned counsel for the petitioner relied upon the judgments of this Court in **Arunachala Logistics Private Ltd. v. RPF Commissioner [WP No.20834 of 2020 dated 19.11.2020]** and **M/s.Choutuppall Handloom Weavers Co-Operative Society v. RPFC, Hyderabad [WP No.11057 of 2021, dated 26.04.2021]**, wherein when no opportunity was provided to the petitioners in the review applications filed, the impugned orders were set aside and the matter was remanded to the respondents for conducting fresh enquiry and to pass necessary orders afresh in accordance with law.

10. Considering the above orders and as this Court time and again held that the proceedings passed under Section 7-B of the Act are subject to adherence to the principles of natural justice and no orders can be passed without hearing the employer in the matter of review applications, it is considered fit to remand the matter by setting aside the impugned order for conducting enquiry afresh and to pass necessary orders in accordance with law, after

providing an opportunity of hearing to the petitioner. The recovery proceedings are kept in abeyance till final orders are passed in the Review Application filed by the petitioner.

11. Accordingly, the Writ Petition is allowed setting aside the impugned order bearing No. TS/HYD-1/R.O./C.-1/T-1/59713/2021/332, dated 16.12.2021 passed under Section 7-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the matter is remanded for conducting enquiry afresh within 4 weeks and to pass necessary orders in accordance with law, after providing an opportunity of hearing to the petitioner. The recovery proceedings are kept in abeyance till final orders are passed in the Review Application filed by the petitioner. No order as to costs."

8. It is specifically averred by the Petitioner at Paragraph No.16 of the affidavit filed by the Petitioner in support of the present writ petition as under :

"16. It is submitted that the impugned Order mentioned that the proceedings were held on 19.05.22, 29.06.22, 27.07.22, 25.08.22, 21.10.22, 03.11.22, 30.11.22, 10.01.23, 25.01.23, 31.03.23, 26.04.23, 21.06.23, 05.07.23 and 18.07.23 and that on 18.07.2023, the petitioner requested for conclusion of the proceedings based on the submission already made by the petitioner on various dates and the last re-joinder submitted on 18.07.2023 and that the same were accordingly concluded. As stated above, after the Order dated 12.04.2022, the

respondent has held only 19.05.22, 29.06.22, 27.07.22, 25.08.22, 21.10.22, 03.11.22, 30.11.22, 10.01.23, 25.01.23, 31.03.23, 05.07.23 and 18.07.23. The petitioner did not receive the notice of hearing for 26.04.23 or 21.06.23. The entire facts and submission were explained to the Respondent Authority on 30.05.2022. On 30.05.2023, the Respondent Authority asked the petitioner to submit its written submission along with fresh documents/evidence which they could not submit earlier. In compliance to the proceedings dated 30.05.2022, the petitioner submitted its written arguments on 15.06.2022 thereby explaining the apparent error in calculation depicting through the table. Further the EO filed their reply dated 29.03.2023 on 21.06.2023, the petitioner filed their rejoinder dated 14.07.2023 through email on 14.07.2023 and physically on 18.07.2023. In the said rejoinder, the petitioner has specifically demonstrated that the vendors against whom the amount of Rs. 105,47,17,492/- was already calculated are part of the category who are having independent PF code (Annexure B) and further, the petitioner has specifically stated that the Enforcement Officer can check the list of vendors available with him or provide us with the list of vendors against whom the liability has been calculated, which will make very clear that these vendors form the part of Annexure B, who have independent PF codes and who are to be excluded. In this background, the question of the passing final order by the respondent authority thereby dismissing the review petition does not arise. This crucial step to verify the contractors

from Annexure B or to provide the list of contractors against whom the liability has been calculated is disregarded by the respondent. In their zest to close the proceedings, the respondent authority has passed the order mechanically thereby confirming the Order dated 16.09.2021."

9. It is the specific case of the Petitioner that in pursuance to the earlier orders of this Court dated 26.04.2022 passed in W.P.No.10127 of 2022, the 1st Respondent held an hearing on 20.05.2022 and the 1st Respondent directed the Petitioner to file written statement with all supporting documents. Accordingly on 15.06.2022, the Petitioner filed the written submissions. In compliance to the proceedings dated 30.05.2022, Petitioner submitted written arguments on 15.06.2022 explaining the apparent error in calculation depicting through the table. Further the E.O. filed the reply dated 29.03.2023 on 21.06.2023 and the Petitioner filed the rejoinder dated 14.07.2023 through e-mail on 14.07.2023 and physically on 18.07.2023.

10. It is further the case of the Petitioner that in the said rejoinder the Petitioner has specifically demonstrated that the vendors against whom the amount of

Rs.105,47,17,492/- was already calculated are part of the category who are having independent PF Code (Annexure – B) and further, the Petitioner has specifically stated that the Enforcement Officer can check the list of the vendors available with him or provide Petitioner with the list of vendors against whom the liability has been calculated which will make very clear that these vendors form the Part of Annexure – B, who have independent PF Codes and who are to be excluded. It is specifically pleaded by the Petitioner that the crucial step to verify the contractors from Annexure-B or to provide the list of contractors against whom the liability has been calculated is disregarded by the 1st Respondent and in their zest to close the proceedings the 1st Respondent Authority has passed the order mechanically thereby confirming the order dated 16.09.2021.

11. Learned Senior Designate Counsel Sri C.V. Mohan Reddy appearing on behalf of the Petitioner mainly put-forth the following submissions.

A) That the order impugned is in clear violation of the orders of this Court dated 01.04.2022 passed in W.P.No.10127 of 2022.

- B) There was no complete hearing of the case.**
- C) The 1st Respondent entertained the Enforcement Officer's reply without reference to the rejoinder of the Petitioner.**
- D) The Petitioner's request for providing the list of vendors was not at all considered without which the proceedings U/s.7-B could not have been taken to its logical end.**
- E) There was flagrant violation of principles of natural justice.**
- F) The entire approach of the 1st Respondent Authority is misconceived and erroneous.**
- G) In spite of repeated requests of the Petitioner to the 1st Respondent Authority to provide the list of the alleged contractors who are covered under SI.No.F. The same was consistently denied by the Petitioner.**
- H) The 1st Respondent Authority failed to discharge his functions in accordance with law, and though the Petitioner filed an IA for summoning the contractors no effort had been made in the said direction.**
- I) The 1st Respondent Authority except relying on the Enforcement Officer's statements did not make any attempt to identify the alleged beneficiaries.**

J) The specific plea of the Petitioner that attempt to recover the alleged contribution for non-existent employees/beneficiaries cannot be countenanced the same had not been considered at all.

K) The 1st Respondent Authority totally failed to collect the relevant evidence before determining the amount payable.

L) There has been no identification of employee/beneficiaries which is a must before effecting recovery and hence invocation of proceedings under EPF Act does not arise, the Authority failed to ensure production of the list of the contractors against whom the subject liability of PF contribution is alleged to be calculated.

M) The scope of the review had been enlarged by raising new grounds to fasten the liability.

The learned senior designate counsel appearing on behalf of the Petitioners based on the aforesaid submissions contended that the Petitioner is entitled for the relief as prayed for in the present writ Petition.

12. The learned counsel appearing on behalf of the Respondents mainly put-forth the following submissions :

i) The Petitioner has an alternative remedy of filing Appeal U/s.7-I of the Act and instead of filing an Appeal against the orders issued U/s.7-A and 7-B of the Act before the CGIT though provision for Appeal is available the Petitioner filed the present writ petition and hence the present writ petition needs to be dismissed.

ii) There is no violation of principles of natural justice as alleged by the Petitioner.

iii) There is no breach of fundamental right.

iv) The 1st Respondent considered all the relevant aspects and the relevant provisions of law and there is no excessive jurisdiction by the 1st Respondent in passing orders dated 16.09.2021 and 31.10.2023 under the Act.

v) The Petitioner cannot contend that though there is an alternative and efficacious remedy the present writ petition is maintainable.

Based on the aforesaid submissions the learned counsel appearing on behalf of the 1st Respondent placing reliance on the averments made in the counter affidavit filed on behalf of the 1st Respondent contends that the writ petition has to be dismissed.

13. This Court opines that it is settled principle of law of pleadings that an averment made by the Petitioner is expected to be specifically denied by the replying party. If there is no specific denial then such averment is deemed to have been admitted by the Respondent. The Petitioner made certain specific averments at para Nos. 14 to 19 of the affidavit filed by the Petitioner in support of the present writ petition which are relevant and material to the present case and the entire case of the Petitioner hinged on these paragraphs of the writ petition and it was thus expected of the Respondents to reply these averments specifically, in fact, to make a proper reference to the records relevant to these paragraphs. In view of the omission on the part of the Respondents to refer to any relevant records and failure to specifically deny the averments made by the Petitioner, this Court is of the considered view that the Petitioner has been able to make out a case for interference in view of the fact that the counter affidavit filed on behalf of the 1st Respondent is silent and does not specifically advert to any of the specific pleas put-forth by the Petitioner at para Nos. 14 to

19 of the affidavit filed by the Petitioner in support of the present writ petition.

14. In so far as the plea of maintainability is concerned this Court opines that the present writ petition is maintainable and the plea of the Respondents Organization of availability of alternative remedy is unsustainable as per the observations of the Apex Court in judgment dated 20.04.2021 reported in (2021) 6 SCC 771 in M/s. Radhakrishnan Industries Vs. State of Himachal Pradesh, which referred to Whirlpool Corporation Vs. Registrar of Trade Marks reported in (1998) 8 SCC 1 and the said view had been reiterated in a recent full bench judgment reported in 2021 SCC Online SC 801 in "Magadh Sugar & Energy Ltd. Vs. State of Bihar and others". The principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy had been summarized in the said Judgment at para 28 and the same is extracted hereunder:

"28. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

In the present case this Court opines that (i) and (iii)(a)(b) extracted above are attracted, hence the present writ petition is maintainable and the plea of availability of alternative remedy is unsustainable, even as per the observations of this court, at para Nos. 9, 10

and 11 of the judgment dated 26.04.2022 passed in W.P.No.10127 of 2022 filed by the petitioner herein on an earlier occasion, the present Writ Petition is maintainable.

15. The Apex Court in its judgment dated 03.04.2008, reported in (2008) 5 SCC 756 in Himachal Pradesh State Forest Corporation vs. Regional Provident Fund Commissioner, the relevant portion at para No. 5 observed as under :

“We accordingly dismiss the appeals but reiterate the recommendation that the amounts due from the Corporation will be determined only with respect to those employees who are identifiable and whose entitlement can be proved on the evidence and that in the event the record is not available with the Corporation (at this belated stage), it would not be obliged to explain its loss, or that any adverse inference be drawn on this score. With this very small modification, we dismiss the appeals.”

16. The Apex Court in the judgment dated 26.10.1989, reported in (1990)1 SCC 68 in Food Corporation of India vs. Provident Fund Commissioner & Others at para 6 and para No.9 dealing with an identical situation observed as under :

"6. We have carefully perused the Commissioner's order and also the order of the High Court. The total amount ordered to be payable comes to about Rs.22,48,000 in respect of the employees of depots namely: Udaipur, Jaipur, Ajmer, Badmer and Sawai Madhopur. The Commissioner has also directed the Divisional Officer, Jaipur to deposit the Provident Fund Contribution i.e. Rs. 18,72,194 to the Fund being maintained by the trustees of the establishment. It is indeed a large amount for the determination of which the Commissioner has only depended upon the lists furnished by the workers, Union. It is no doubt true that the employer and contractors are both liable to maintain registers in respect of the workers employed. But the Corporation seems to have some problems in collating the lists of all workers engaged in depots scattered at different places. It has requested the Commissioner to summon the contractors to produce the respective lists of workers engaged by them. The Commissioner did not summon the Contractors nor the lists maintained by them. He has stated that the Corporation has failed to produce the evidence."

9. It will be seen from the above provisions that the Commissioner is authorised to enforce attendance in person and also to examine any person on oath. He has the power requiring the discovery and production of documents. This power was given to the Commissioner to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other

dues by identifying the workmen. The Commissioner should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of the Commissioner. It would be failure to exercise the jurisdiction particularly when a party to the proceedings requests for summoning evidence from a particular person."

17. In a judgment dated 16.03.2022 passed in W.P.No.33763 of 2010 it is observed in relation to the issue of summoning the contractors as under:

"This Court notices that the Writ Petition is of the year 2010 and is pending for a decision on this short and simple issue. The law on the subject is sufficiently clear. In National Thermal Power Corporation Ltd., case, relied upon by the learned senior counsel, the Division Bench of the Calcutta High Court held on the facts that the petitioner should produce all the documents that are available with them. If the "authority" is unable to find relevant material they should take steps to get names and addresses of the employees and the workmen thereafter only the final order can be passed. Hon'ble Supreme Court of India in Food Corporation of India case clearly noticed in that case also that the Food Corporation of India was unable to give all the details that are necessary. The Food Corporation of India requested the Commissioner under the Act to summon the contractors but he did not do so. Therefore, in paragraph 7 of the judgment the Honble Supreme Court of

India considered the question whether the Commissioner who is the statutory authority has exercised his powers as necessary under the Act. After considering the provisions of the Act, the Hon'ble Supreme Court of India held that the Commissioner should exercise all clearly held it would be a failure to exercise jurisdiction, particularly when the party to a proceeding requests for summoning the evidence. **To a similar effect in the judgment of Chennai Petroleum Corporation case (3 supra), wherein learned single Judge also held that the respondent authority should conduct an enquiry to determine the sum due after impleading necessary parties to the proceedings. It is reiterated that the Commissioner should collate all evidence and collect all the material available. Ultimately, in paragraph 21 of the said judgment it was held that the authority had committed illegality in not considering the petitioner for impleading the contractor.**

In view of the clear and categorical exposition of law by the highest Courts of the land, this Court has no hesitation to allow the Writ Petition.

Accordingly, the Writ Petition is allowed setting aside the impugned order. The authority under the Act, who has passed the impugned order, is directed to once again consider and dispose of the application (filed by the petitioner to implead the contractors/societies/Dwara groups, podhupu sangalu etc., as per the list enclosed to the said proceedings) on its own merits in accordance with

law. It is needless to say, in view of the long delay, the said application should be considered and should be given an opportunity to make his oral and legal submissions. There shall be no order as to costs."

18. The Bombay High Court relying on the judgment of the Apex Court in Food Corporation of India vs. Provident Fund Commissioner & Others dated 26.10.1989 reported in (1990) 1 SCC 68 referred to and extracted above in its judgment dated 28.02.2006 in W.P.No.1064/2001 in Sandeep Dwellers Pvt. Ltd., vs. Union of India reported in (2007) 3 Bombay CR 898 observed at para Nos. 11 and 12 as under :

11. Petitioners have attempted to demonstrate that as beneficiaries are unknown and the department itself had doubts, recovery from any earlier date for which no deduction has been made should not be allowed. The law in the point is already discussed above. **The beneficiaries must be known and the amount of deductions cannot be permitted to lie idle with the department. Hence while finding out whether employees are covered under the Scheme/Act or not, this issue can be conveniently gone into by authority under section 7A of P.F. Act and it can choose to give effect to its order from any appropriate date as per evidence on record.**

12. The writ petitions are therefore partially allowed. The impugned order under section 7A dt.5/3/2001 at Annex."S" in W.P. 1164/2001 is quashed & set aside. Demands, if any, served upon Petitioners in other petitions are also quashed. Petitioners to file appropriate replies/amendments to their reply if already filed, if necessary in response to notices issued by Regional Provident Fund Commissioner and said authority to proceed further to hold inquiry & investigate as per provisions of section 7A of P. F. Act. **The said inquiries shall be conducted and completed as early as possible & in any case within period of six months from the date of communication of these orders to respondents. Rule made absolute accordingly. No costs.**

19. **The Appellate Tribunal at New Delhi in Appeal ATA No.966 (12) 2004 between BSNL vs. Assistant Regional Provident Fund Commissioner, Udaipur, vide its order dated 23.03.2005 held and observed that the purpose of Act is not to collect the money and to keep it in the coffers of the Government and the workers have to be identified first before the amount is assessed and recovered. The act of determining dues by taking hypothetical percentage of total contract value towards the wages and recovering the same from Employer would not otherwise help the workers who remained unidentified.**

20. The High Court of judicature at Calcutta in its judgement dated 04.10.2005 reported in (2006) 4 L.L.N. 468 in Regional Provident Fund Commissioner, Calcutta and Assam Biri Factories (Private Limited) and Others at para No.43 observed as under :

Para 43: "The learned Tribunal therefore, rightly found that the contractors need be or should be summoned and the principal employer cannot be asked to pay both the contributions payable by himself in respect of the employees directly appointed by him and also in respect of the employees, employed by or through a contractor".

21. In the Judgment dated 03.03.1998 in "N.T.P.Corporation Ltd. Vs. Regional Provident Fund Commissioner and another" in particular, at para 4 it is observed as under:

"4. Accordingly, we direct the respondent to keep the order dated October 1, 1996 in abeyance and give the petitioner an opportunity to produce documents and we also direct the Corporation to produce all records and documents which are in their possession in respect of the contract. Thereafter, the authorities concerned if they are unable to find out relevant material required for the purpose of determination as indicated above, in that event, they would take steps in the matter and further for the

purpose of getting name and address of the employees and the workmen each and every contractor should be summoned and their attendance should be enforced before the authorities concerned and after giving opportunity to all the parties, and after hearing the matter in accordance with law, the authorities concerned will pass a fresh order either confirming the order or revoking and/or altering the order that had already been passed. Steps in terms of this order should be taken as expeditiously as possible preferably within 2 months."

22. In the Judgment dated 25.01.2006 in "Chennai Petroleum Corporation Ltd. Vs. Assistant Provident Fund Commissioner" in particular, at paras 7 and 21 it is observed as under:

"7. The learned Counsel for the petitioner would contend that the order impugned in this writ petition is in violation of principles of natural justice for the reason that through the claim for payment of contribution of employees employed by the contractors from the year 1967, notice was issued only on October 16, 2000 directing the petitioner to pay the contribution and therefore, the issuing of notice after a lapse of three decades is against the principles of natural justice.

21. Therefore, as per the principles laid down in the decisions cited supra, when it is brought to the notice of the respondent the available details of the contractors, the respondent should have impleaded

the contractors and proceeded against them for determining the quantum of provident fund contribution payable by them as per the provisions of the Act. Therefore, the respondent has committed an illegality in not considering the petition filed by the petitioner for impleading the contractors. Therefore, the impugned order is liable to be set aside."

23. In the Judgment dated 26.10.1989 in "Food Corporation of India Vs. Provident Fund Commissioner and another" held in its head note as under:

"HELD: The Commissioner, while conducting an inquiry under Section 7A of the Employees, Provident Fund and Miscellaneous Provisions Act, 1952 has the same powers as are vested in a court under the Code of Civil Procedure for trying a suit. Thus, the Commissioner is authorised to enforce attendance in person and also to examine any person on oath. He has the power requiring the discovery and production of documents. This power was given to the Commissioner to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the 756 workmen. The Commissioner should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of the Commissioner. **It would be failure to exercise the jurisdiction particularly when a party to the proceedings requests for summoning evidence from a particular person.**

In the instant case, the appellant --Corporation had some problems in collating the lists of all workers engaged in depots scattered at different places. It requested the respondent--Commissioner to summon the contractors to produce the respective lists of workers engaged by them. However, the appellant--Commissioner did not summon the contractors, nor the lists maintained by them. The matter is, therefore, remitted to the Commissioner for fresh disposal.

24. This Court opines that the judgments relied upon by the learned counsel appearing on behalf of the 1st Respondent do not apply to the facts of the present case.

25. In view of the fact that none of the specific pleas put-forth by the Petitioner which have infact been considered by various Courts under identical circumstances, (referred to and extracted above) have however been curiously ignored by the 1st Respondent herein, and in view of the fact as borne on record that neither there is any specific denial in the counter affidavit filed by the 1st Respondent pertaining to the said specific pleas put-forth by the Petitioner nor there is any consideration by the 1st Respondent herein or any discussion or any reasoning pertaining to the same even

as per the orders impugned passed by the 1st Respondent Authority in the present writ petition, hence, this Court is inclined to interfere with the order impugned dated 31.10.2023 passed by the 1st Respondent Authority which is in clear violation of the orders of this Court dated 26.04.2022 passed in W.P.No.10127/2022 in its true spirit.

26. Taking into consideration:

- (a) The aforesaid facts and circumstances of the case,
- (b) The averments made in the counter affidavit filed by the 1st Respondent,
- (c) The observations of the Apex Court in the various judgments referred to and extracted above,

(i) (2021) 6 SCC 771 in M/s. Radhakrishnan Industries Vs. State of Himachal Pradesh, which referred to Whirlpool Corporation Vs. Registrar of Trade Marks reported in (1998) 8 SCC 1 and the said view had been reiterated in a recent full bench judgment reported in 2021 SCC Online SC 801 in "Magadh Sugar & Energy Ltd. Vs. State of Bihar and others",

(ii) (2008) 5 SCC 756 in Himachal Pradesh State Forest Corporation vs. Regional Provident Fund Commissioner,

- (iii) (1990)1 SCC 68 in Food Corporation of India vs. Provident Fund Commissioner & Others,
- (iv) The judgment dated 16.03.2022 passed in W.P.No.33763 of 2010,
- (v) The judgment dated 28.02.2006 in W.P.No.1064/2001 in Sandeep Dwellers Pvt. Ltd., vs. Union of India reported in (2007) 3 Bombay CR 898,
- (vi) The Appellate Tribunal at New Delhi in Appeal ATA No.966 (12) 2004 between BSNL vs. Assistant Regional Provident Fund Commissioner, Udaipur
- (vii) The High Court of judicature at Calcutta in its judgement dated 04.10.2005 reported in (2006) 4 L.L.N. 468 in Regional Provident Fund Commissioner, Calcutta and Assam Biri Factories (Private Limited),
- (viii) The order dated 26.04.2022 passed in W.P.No.10127 of 2022.
- (ix) The Judgment dated 03.03.1998 in "N.T.P.Corporation Ltd. Vs. Regional Provident Fund Commissioner and another",
- (xiii) The Judgment dated 25.01.2006 in "Chennai Petroleum Corporation Ltd. Vs. Assistant Provident Fund Commissioner",

(xiv) The Judgment dated 26.10.1989 in “Food Corporation of India Vs. Provident Fund Commissioner and another”

(d) The fact as borne on record pertaining to the omission on the part of the Respondents and failure to specifically deny the averments made by the Petitioner in the affidavit filed by the petitioner in support of the present writ petition,

The Writ Petition is allowed, the order impugned dated 31.10.2023 passed under Section 7-B of the Employees Provident Funds & Miscellaneous Provisions Act, 1952 is set aside and the matter is remanded to the 1st Respondent for conducting enquiry afresh duly taking into consideration the observations of the Court in the various judgments referred to and extracted above, within 4 weeks and pass appropriate reasoned orders in accordance to law in conformity with principles of natural justice after providing an opportunity of personal hearing to the Petitioner. The recovery proceedings are kept in abeyance till final orders are passed in the review application filed by the Petitioner. This Court is not inclined to interfere with the proceedings dated

16.09.2021 passed by the 1st Respondent Authority since the same is subject matter of the review application filed by the Petitioner under Section 7-B. of the EPF & MP Act, 1952 seeking for review of the orders dated 16.09.2021 passed under Section 7-A of the Act.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

MRS. JUSTICE SUREPALLI NANDA

Date: 30.07.2024.

Note: L.R.Copy to be marked
(B/o) *Yvkr*